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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 44172
Plaintiff-Appellant,)	
)	Kootenai County Case No.
v.)	CR-2015-20159
)	
ANTONIA KATE FULLER,)	
)	
Defendant-Respondent.)	
)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

**HONORABLE LANSING L. HAYNES
District Judge**

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ARGUMENT

The District Court Erred When It Concluded That Seeing Fuller's Tires Cross The White Line Marking The Right Edge Of The Road Did Not Provide Reasonable, Articulate Suspicion For The Traffic Stop

A. Introduction

The district court concluded that Fuller's act of driving over the right side edge line on the road did not provide reasonable suspicion that she had committed a traffic infraction because she "did not drive off the road" and therefore "stayed on the lane of travel." (4/1/16 Tr., p. 4, L. 19 – p. 6, L. 11.) The district court's decision that the edge line road marking was essentially irrelevant to defining the roadway or lane of travel is inconsistent with the holding of State v. Neal, 159 Idaho 439, 362 P.3d 514 (2015), the authority relied on by the district court, and is contrary to the holding of State v. Slater, 136 Idaho 293, 32 P.3d 685 (Ct. App. 2001). (Appellant's brief, pp. 4-7.)

On appeal Fuller acknowledges that "the *Neal* Court limited its holding to 'driving onto but not across the line marking the right edge of the road,'" but argues "the Court provided no additional reasoning to support a conclusion that simply crossing the edge of the fog lane [sic], while maintaining travel on the roadway, constitutes a violation of I.C. § 49-637(1)." (Respondent's brief, p.8.) She also argues that "the plain language of the statute does not give drivers notice that crossing the fog line is a ticketable offense." (Id.) Fuller does not address the Idaho Court of Appeals' precedent. (See generally Respondent's brief.) These arguments do not withstand analysis; application of the relevant legal standards shows the district court erred.

B. Applicable Law Does Not Support The Holding That The Edge Line Is Irrelevant To Reasonable Suspicion A Driver Is Maintaining The Proper Lane Of Travel

Idaho's "Rules of the Road" provide, with certain exceptions not relevant here, that cars "shall be driven upon the right half of the roadway," I.C. § 49-630(1), and "shall be driven as nearly as practicable entirely within a single lane," I.C. § 49-637(1). Thus, driving off the roadway or not entirely within a single lane is a citable traffic infraction. I.C. § 49-1501. A traffic stop is constitutionally justifiable "if there is articulable and reasonable suspicion that the vehicle is being driven contrary to traffic laws." State v. Evans, 134 Idaho 560, 563, 6 P.3d 416, 419 (Ct. App. 2000) (citing United States v. Cortez, 449 U.S. 411, 417 (1981); State v. Rawlings, 121 Idaho 930, 932, 829 P.2d 520, 522 (1992)). The stop in this case was constitutionally justified because the officer had reasonable suspicion Fuller committed the traffic infraction of failing to maintain a lane of travel because he saw her drive over the edge line.

The holding and analysis of Neal indicate that the right-side edge line marks the edge of the lane and the roadway. The Idaho Supreme Court held that "driving onto *but not across* the line *marking the right edge of the road* does not violate Idaho Code section 49-637," and therefore observing such behavior does not provide reasonable suspicion for the stop. Neal, 159 Idaho at 447, 362 P.3d at 522 (emphasis added). The necessary corollary of this holding is that driving "across the line marking the right edge of the road," Id., does violate I.C. § 49-637. Because the line "mark[s] the right edge of the road," Id., crossing that line onto the shoulder beyond it to any degree is a departure from the roadway and the lane of travel.

Fuller first argues that, other than the limitation on its holding, the Court in Neal "provided no additional reasoning to support a conclusion that simply crossing the edge of

the fog lane, while maintaining travel on the roadway, constitutes a violation of I.C. § 49-637(1).” (Respondent’s brief, p. 8.) This is not accurate, however. Indeed, at several points in its analysis, including the holding, the Court states that the white line on the right-hand side of the road is an edge line demarcating the lane of travel and the roadway from the shoulder.

For example, the Court stated that the “purpose” of the “edge line” is to “inform the driver of the road’s edge.” Neal, 159 Idaho at 445-46, 362 P.3d at 520-21.¹ It interpreted the line as “the edge of the roadway,” and thus within the lane of travel. Id. at 446, 362 P.3d at 521. It reasoned that the edge line was on a portion of the road “not the shoulder or the sidewalk or the curb” and therefore by statutory definition was on “the roadway.” Id. Finally, the holding, as noted above, indicates the lane ends, and the shoulder begins, at the outside of the edge line. Contrary to Fuller’s argument and the district court’s holding, Neal stands for the proposition that the edge line does demarcate the edge of the roadway, and that while the edge line is itself still part of the roadway, what lies beyond it is not.

Fuller also argues that the “plain language” of I.C. § 49-637(1) “does not give drivers notice that crossing the fog line is a ticketable offense.” (Respondent’s brief, p 8.) “Notice,” however, is a due process concept. See, e.g., State v. Ruggiero, 156 Idaho 662,

¹ The majority here cites to the Manual on Uniform Traffic Control Devices (“MUTCD”). Id. at 446 n. 2, 362 P.3d at 521 n.2. The dissent quoted the MUTCD as defining the edge line as “a normal solid white line to delineate the right-hand edge of the roadway.” Id. at 448, 362 P.3d at 523 (quoting MUTCD § 3B.06.04). This context further demonstrates that the Court articulated a standard whereby the edge line delineates the edge of the roadway and lane of travel rather than merely provides guidance that the edge may be somewhere near the line. (Compare 4/1/16 Tr., p. 5, L. 17 – p. 6, L. 11 (edge line is merely “a warning that one is getting near the road barrier”).)

670, 330 P.3d 408, 416 (Ct. App. 2014) (“A statute may be void for vagueness if it fails to give adequate notice to people of ordinary intelligence concerning the conduct it proscribes or if it fails to establish minimal guidelines to govern law enforcement or others who must enforce the statute.”). Fuller has failed to show that this argument is relevant to the Fourth Amendment standard of reasonable suspicion. Even if the argument were relevant, it is unpersuasive. The “plain language” of the statute also does not specify that crossing other lane markers or road lines would constitute a violation either, yet no motorist could effectively claim that an officer would lack reasonable suspicion to stop him if he crossed the line demarking the lane for oncoming traffic.

The statute provides that failing to maintain a lane is an offense, and the edge line delineates the right-hand edge of that lane. Therefore, an officer who observes a motorist cross the edge line has reasonable suspicion that the motorist has failed to maintain the lane of travel and has driven off the roadway.

C. Idaho Court Of Appeals Precedent Also Shows The District Court Erred

In State v. Slater, 136 Idaho 293, 298, 32 P.3d 685, 690 (Ct. App. 2001), the Idaho Court of Appeals reasoned as follows:

Idaho Code § 49–630(1) requires that a vehicle be driven on the right half of the roadway, except in certain circumstances that are not applicable in this case. The “roadway” means that portion of a highway that is “improved, designed or ordinarily used for vehicular travel.” I.C. § 49–119(18). It does not include “sidewalks, shoulders, berms [or] rights-of-way.” *Id.* Accordingly, when Officer Burns observed Slater’s tires cross the fog line, albeit fleetingly, Burns now possessed the requisite reasonable suspicion that Slater had violated I.C. § 49–630 by driving on the shoulder of the highway, rather than on the “roadway.”

Likewise, when the officer in this case saw Fuller's tires cross the edge line, he, too, had reasonable suspicion that Fuller was driving on the shoulder and not on the roadway or within her lane.

The Slater opinion is controlling in this case unless overruled by Neal. As set forth above, the Neal and Slater holdings are entirely compatible—an officer observing a motorist drive over (as opposed to on) an edge line has reasonable suspicion to believe the motorist has committed a traffic infraction. Even if Neal could not be read as endorsing the holding of Slater, it is not inconsistent therewith, and therefore Slater was controlling of the motion before the district court.

Because precedents from both the Idaho Supreme Court and the Idaho Court of Appeals hold that crossing over an edge line provides reasonable suspicion to believe the motorist has committed a traffic infraction, the district court erred in concluding that the officer's observation of Fuller driving over the edge line did not constitute reasonable suspicion justifying a traffic stop.

CONCLUSION

The state requests this Court to vacate the district court's order suppressing evidence and remand for further proceedings.

DATED this 8th day of September, 2017.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th day of September, 2017, served a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT by emailing an electronic copy to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
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KKJ/dd